

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff/Respondent,**

V.

**MARIEL SALAMAN-FLORES,
Defendant/Movant.**

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**CR. No. C-11-764-2
(CA. No. C-12-390)**

**ORDER FOR RESPONDENT TO ANSWER
AND ORDER ALLOWING MOVANT TO REPLY**

On December 14, 2012, the Clerk received Movant Mariel Salaman-Flores' (Salaman-Flores) motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (D.E. 48.) The Court has reviewed the motion and concludes that summary dismissal pursuant to Rule 4(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2012) ("2255 RULES") is inappropriate. Accordingly, the United States is ORDERED to answer the § 2255 motion within forty-five (45) days of the entry of this Order.

As part of its answer, the government should address the effect of Salaman-Flores' waiver of her right to file a § 2255 motion, which was contained in her written plea agreement. (D.E. 36). In particular, the government should address: (1) whether the record supports the conclusion that the waiver was knowing and voluntary; (2) whether the waiver is enforceable; and (3) whether the waiver precludes Movant from bringing all of the grounds in her motion. *See generally United States v. White*, 307 F.3d 336, 343-44 (5th Cir. 2002) (an ineffective assistance claim survives a waiver of § 2255 rights "only when the claimed assistance directly affected the validity of that waiver or the plea itself"); *United States v.*


Wilkes, 20 F.3d 651 (5th Cir. 1994) (enforcing defendant's voluntary and knowing waiver of § 2255 rights).

If there are claims in the motion that are not barred by the waiver, the United States' response will address those claims on their merits.

It is further ORDERED that the United States file with the Clerk, at or before the time of its answer, transcripts of all pertinent proceedings that are not already part of the record. Relevant affidavits, if any, are also to be filed with the answer.

Pursuant to Rule 5(d) of the 2255 RULES, Salaman-Flores may file a reply not later than thirty (30) days after service of the government's answer.

ORDERED this 18th day of December 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE